



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 17, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0160

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding and Pursuits; 13.031-POL 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy.	Not Sustained - Training Referral
# 2	SPD policy 8.200 - Using Force (1) Use of Force: When Authorized.	Not Sustained - Lawful and Proper (Expedited)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	SPD policy 8.200 - Using Force (1) Use of Force: When Authorized.	Not Sustained - Lawful and Proper (Expedited)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) allegedly used unauthorized force to apprehend Community Member #1 (CM#1). NE#1 also allegedly violated traffic laws and used an unauthorized vehicle tactic during the encounter.

### **ADMINISTRATIVE NOTE:**

The Seattle Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

The unauthorized force allegations were approved for Expedited Investigation. That means OPA, with OIG's agreement, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees about those allegations.

### **SUMMARY OF INVESTIGATION:**

On March 21, 2023, the named employees and other officers responded to an in-progress catalytic converter theft. NE#1 and Witness Officer #1 (WO#1) saw a suspect—later identified as CM#1—preparing to drive away. NE#1 activated his police cruiser's emergency lights and ordered CM#1 to exit the car. Instead, CM#1 reversed into a parked



car and drove into a residential driveway. NE#1 struck the passenger side of CM#1's car with his police cruiser. CM#1 exited and fled on foot. After a chase, CM#1 was apprehended. CM#1 alleged that NE#1 punched and slapped him, and NE#1 yanked him by the neck during the apprehension.

OPA opened an intake investigation. During the intake, OPA saw NE#1 disregard stop signs twice while en route to the incident location without emergency lights activated. However, since NE#1 did decrease speed at each stop sign, and officers have discretion about whether to activate emergency lights during responses, OPA did not classify it for investigation.

NE#1 wrote the incident report. In pertinent part, NE#1 wrote that upon arrival, WO#1 saw CM#1 driving a car without a license plate leaving the incident location. NE#1 wrote that missing license plates were common for stolen cars. NE#1 also noted that when CM#1 reversed into a parked car and entered a residential driveway, there was probable cause to arrest him for eluding police. NE#1 indicated that he conducted an exigent vehicle-to-vehicle contact to prevent CM#1 from approaching the likely occupied residence further. While CM#1 led officers on a foot chase, NE#1 noticed CM#1's car ignition was "punched." He ran its vehicle identification number, which indicated it was stolen. NE#1 then joined the officers pursuing CM#1. After CM#1's apprehension, CM#1 reported difficulty breathing. Officers requested the Seattle Fire Department (SFD) for medical assistance. SFD arrived, evaluated CM#1, and found no injuries. NE#1 searched CM#1's car and found CM#1's wallet with his identification card, packages addressed to various recipients, detached licensed plates, and tools commonly used for vehicle thefts and burglaries.

NE#1 also wrote a use-of-force statement explaining his involvement. Specifically, describing the vehicle tactic used, NE#1 wrote:

*[CM#1] then unexpectedly accelerated southeast broadside towards an occupied home with no other avenues of escape. With the situation tense, uncertain, and rapidly evolving, I made the split-second decision based on the fact that I just witnessed [CM#1] reckless [sic] collide with another vehicle and driving towards an occupied residence that I observed had a vehicle in the driveway. I observed the only other possible avenue of escape through the sidewalk in front of the residence was far too narrow, and the suspect would not have chosen that route with a massive tree in the way. I put the vehicle back into drive and conducted a slow speed (under 10 MPH), exigent vehicle-to-vehicle contact with minimal speed to prevent [CM#1] from driving the vehicle into the residence, endangering those within.*

NE#1 also wrote:

*The perceived public safety threat and the public interest was to take [CM#1] into custody immediately before he could cause anymore [sic] damage to people or property. The short time to react and circumstances did not permit time for further de-escalation attempts without immediately endangering the public, officers, and the suspect.*

Explaining the force used to takedown CM#1 during the foot chase, NE#1 wrote:

*At this point, de-escalation had failed, and I was actively chasing a fleeing suspect who committed multiple felony offenses. I followed [CM#1] west on E McGraw St until I was able to catch up to him and grab his left arm. I then conducted a single officer takedown using a*



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*single “straight arm-bar” takedown method I teach as an instructor. I know this method, when used onto a soft surface, is not reasonably likely to cause injury or harm, and have used this method countless times.*

NE#1 described the “straight arm-bar” as “using my left hand to grab [CM#1’s] left wrist and my right hand to [CM#1’s] left triceps and twist my body left towards the soft ground nearby.”

NE#1 further described hitting CM#1 after he was detained:

*While placing [CM#1] into handcuffs, he continued to yell and call for help. [CM#1’s] voice appeared muffled as if he was speaking into the grass, so I looked over and saw him with his face on the ground even though officers were only on his shoulders. I patted him on the back, and then turned his head out of the grass away from me as trained to do. Now that [CM#1] was no longer muffled, I could hear and understand that he was complaining that he was having a hard time breathing, so I removed my knee off his back and replaced it with my hand to decrease pressure on the chest...[CM#1] was nonresponsive for attempted communication by officers to deescalate [him]. [CM#1] declined to acknowledge his rights when I very lightly tapped [CM#1’s] shoulder and side of his head to focus [his] attention on me, [CM#1] then began yelling that I had slapped and punched him.*

NE#2’s use-of-force statement explained that he responded to the following dispatched report: “[Unknown] PERSON UNDER NEIGHBOR’S [VEHICLE,] [POSSIBLY] TRYING TO TAKE CATALYTIC CONVERTER. NO [WEAPONS] SEEN.” NE#2 wrote that he arrived and saw officers chasing CM#1. He indicated that CM#1 “ran past [NE#2]” and “[side-stepped] me when I grabbed toward him.” NE#2 wrote that another officer apprehended CM#1, and NE#2 helped with handcuffing.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

**13.031 - Vehicle Eluding and Pursuits; 13.031-POL 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy.**

It was alleged that NE#1 used a prohibited vehicle tactic against CM#1.

On January 13, 2023, SPD’s chief sent an email describing vehicle-to-vehicle contact as “contact between vehicles designed to guide or prevent movement of a slow-moving (generally ten miles per hour or less) or stationary suspect vehicle, where there is not significant impact (not ramming), and the tactic is reasonably unlikely to cause injury.” It prohibited vehicle-to-vehicle contact except for exigent circumstances and when: 1) the suspect poses a public safety threat because of observed extreme and unsafe driving behavior, or 2) there is a reasonable suspicion that the suspect vehicle poses an immediate threat of death or serious physical injury to another.

Here, NE#1 used vehicle-to-vehicle contact to stop CM#1’s car as it entered a residential driveway and approached the home.



NE#1's chain of command, except Witness Officer #2 (WO#2)—a watch lieutenant—reviewed the tactic and found it consistent with policy. WO#2 wrote:

*After extensively reviewing the department's policy and procedure regarding vehicle pursuits and vehicle tactics, I do not see where it is allowed to pursue or to have vehicle-to-vehicle contact in this incident. [Body-worn videos] and [in-car videos] of this scene where the vehicle-to-vehicle contact was made shows without question that [CM#1's] vehicle could not have impacted the residence his vehicle eventually faced.*

However, WO#2 also noted that in-car video captured WO#1 yelling "pin him, pin him, pin him," likely "[inducing] [NE#1] to make vehicle-to-vehicle contact with suspect [CM#1's] vehicle."

Similarly, OPA found NE#1's vehicle tactic inconsistent with policy. Although CM#1's reversal into an empty parked car demonstrated determination to escape, it did not necessarily constitute an imminent public safety risk or exigent circumstances requiring the elected vehicle tactic. At that time, officers had probable cause for theft, eluding police, and property damage, none of which were violent offenses. Moreover, as WO#2 noted, CM#1's car posed no likely threat of colliding with the home. Nevertheless, NE#1 struck the vacant passenger side of CM#1's car at a relatively low speed. While OPA disagrees with his threat assessment, NE#1's tactic was unlikely to injure CM#1.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- Required Training: NE#1's chain of command should discuss OPA's findings with him and re-train or counsel him as necessary. Re-training or counseling shall be uploaded to and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

#### **Named Employee #1 - Allegation #2**

***SPD policy 8.200 - Using Force (1) Use of Force: When Authorized.***

It was alleged that the named employees used unauthorized force to apprehend CM#1.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve



a law-enforcement objective.” Whether force is reasonable depends “on the totality of circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” during tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

Here, after gathering probable cause to arrest CM#1 for several felony offenses and CM#1 leading officers on a foot chase, NE#1 caught him and used an arm bar to take him down.



NE#1 explained that he intentionally executed the takedown on grass to minimize the likelihood of injury. NE#1’s chain of command found the takedown within policy. OPA agrees. Given CM#1’s resistance and determination to escape, NE#1’s relatively low force to end the encounter was objectively reasonable, necessary, and proportionate. Similarly, once CM#1 was handcuffed, NE#1 used *de minimus* force to get his attention. Specifically, NE#1 repeatedly tapped CM#1’s head, forearm, and shoulder, which CM#1 later described as punches and hits. NE#2 used less force, placing a knee across CM#1’s back during handcuffing. Both tactics were consistent with policy and training.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

<sup>1</sup> A demonstrated arm bar.



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**Named Employee #2 - Allegation #1**

***SPD policy 8.200 - Using Force (1) Use of Force: When Authorized.***

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**